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# IS THE RUSH-BAGOT CONVENTION IMMORTAL?

BY THE HON. HENRY SHERMAN BOUTELL.

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SINCE April 29, 1817, when the agreement between the United States and Great Britain, commonly called the Rush-Bagot Convention, was concluded, it has successfully resisted all efforts to modify or annul it, although for more than half a century it has been practically obsolete. For the past sixty years both parties have violated the agreement with the same persistency with which they have both maintained at all times that the agreement was in full force and effect, and its faithful observance essential to their mutual welfare.

It has often been maintained by diplomatists and statesmen that the true spirit of the Rush-Bagot Convention has never been violated by either of the parties thereto. On the other hand, many practical men of affairs insist that a rigid compliance with the letter of the Convention is now working a great injustice to certain important American industries, and that, as this literal interpretation relates to matters which were not considered when the contract was made, it is not in harmony with the spirit of the agreement. During the last few years Congress has shown a disposition to enquire into the sources of the perennial vitality of this Convention, and to ascertain whether a prolongation of its existence is for the best interests of the United States. The subject will undoubtedly come before Congress again at its next session, and steps will probably be taken to secure the abrogation or modification of the Convention. Some account, therefore, of the origin and history of this singular agreement, concerning which there is such a diversity of opinion, may be of general interest at this time.

In 1815, at the close of the war between the United States and Great Britain, each country had a considerable naval force

on the Northern Lakes. The reduction of this force was essential to a permanent peace. Nevertheless, in the latter part of the summer of 1815, Mr. John Quincy Adams, our Minister to Great Britain, forwarded to this government evidence that Great Britain, instead of disarming her lake fleet, was making plans to increase its size and efficiency. This determination on the part of the British Government led Mr. Monroe, our Secretary of State, on November 16, 1815, to write to Mr. Adams instructing him to propose to the British authorities a mutual disarmament on the Great Lakes. Mr. Adams promptly took up the subject with Lord Castlereagh, the British Secretary of Foreign Affairs; but after six months of negotiation with him no conclusion had been reached. By July, 1816, the British Minister to the United States, Right Honorable Charles Bagot, had received authority from his government to treat with our Secretary of State relative to disarmament on the lakes. The terms of the arrangement, as finally agreed upon, were suggested by Mr. Monroe in a letter to Mr. Bagot, dated August 2, 1816. In this letter Mr. Monroe said:

"I have the honor now to state that the President is willing, in the peace which so happily exists between the two nations and until the proposed arrangement shall be canceled in the manner hereinafter suggested, to confine the naval force to be maintained on the lakes on each side to the following vessels, that is: On Lake Ontario to one vessel not exceeding 100 tons burthen and one 18-pound cannon, and on the Upper Lakes to two vessels of like burthen and force, and on the waters of Lake Champlain to one vessel not exceeding the like burthen and force; and that all other armed vessels on these lakes shall be forthwith dismantled, and likewise that neither party shall build or arm any other vessel on the shores of those lakes.

"That the naval force thus retained by each party on the lakes shall be restricted in its duty to the protection of its revenue laws, the transportation of troops and goods, and to such other services as will in no respect interfere with the armed vessels of the other party.

"That should either of the parties be of opinion hereafter that this arrangement did not accomplish the object intended by it, and be desirous of annulling it, and give notice thereof, it shall be void and of no effect after the expiration of — months from the date of such notice."

The method adopted for carrying out the understanding between the two governments was the diplomatic device known as an interchange of notes. On April 28, 1817, Mr. Bagot wrote to Richard Rush, our Acting Secretary of State, as follows:

WASHINGTON, April 28, 1817.

The undersigned, His Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acquaint Mr. Rush that,

having laid before His Majesty's Government the correspondence which passed last year between the Secretary of the Department of State and the undersigned upon the subject of a proposal to reduce the naval force of the respective countries upon the American lakes, he has received the commands of His Royal Highness the Prince Regent to acquaint the Government of the United States that His Royal Highness is willing to accede to the proposition made to the undersigned by the Secretary of the Department of State in his note of the 2d of August last.

His Royal Highness, acting in the name and on the behalf of His Majesty, agrees that the naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario to one vessel not exceeding 100 tons burden and armed with one 18-pound cannon.

On the Upper Lakes to two vessels not exceeding like burden each and armed with like force.

On the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And His Royal Highness agrees that all other armed vessels on these lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. His Royal Highness further agrees that if either party should hereafter be desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The undersigned has it in command from His Royal Highness the Prince Regent to acquaint the American Government that His Royal Highness has issued orders to His Majesty's officers on the lakes directing that the naval force so to be limited shall be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The undersigned has the honor to renew to Mr. Rush the assurances of his highest consideration.

CHARLES BAGOT.

To this note Mr. Rush sent the following reply on the next day:

DEPARTMENT OF STATE, *April 29, 1817.*

The undersigned, Acting Secretary of State, has the honor to acknowledge the receipt of Mr. Bagot's note of the 28th of this month, informing him that, having laid before the Government of His Britannic Majesty the correspondence which passed between the Secretary of State and himself upon the subject of a proposal to reduce the naval force of the two countries upon the American lakes, he has received the commands of His Royal Highness the Prince Regent to inform this Government that His Royal Highness was willing to accede to the proposition made by the Secretary of State in his note of the second of August last.

The undersigned has the honor to express to Mr. Bagot the satisfaction which the President feels at His Royal Highness the Prince Regent's having acceded to the proposition of this Government as contained in the note alluded to. And in further answer to Mr. Bagot's

note, the undersigned, by direction of the President, has the honor to state that this Government, cherishing the same sentiments expressed in the note of the second of August, agrees that the naval force to be maintained upon the lakes by the United States and Great Britain, shall, henceforth, be confined to the following vessels on each side, that is—

On Lake Ontario to one vessel not exceeding 100 tons burden, and armed with one 18-pound cannon. On the Upper Lakes to two vessels not exceeding the like burden each, and armed with like force, and on the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And it agrees that all other armed vessels on these lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. And it further agrees that if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The undersigned is also directed by the President to state that proper orders will be forthwith issued by this Government to restrict the naval force thus limited to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The undersigned eagerly avails himself of this opportunity to tender to Mr. Bagot the assurances of his distinguished consideration and respect.

RICHARD RUSH.

This correspondence constitutes the compact which has been binding upon the two countries for over eighty-four years. By the statesmen and publicists of both countries it has been variously termed an arrangement, agreement, convention and treaty.

It was nearly a year after the exchange of notes that, on April 6, 1818, President Monroe submitted to the Senate the correspondence between Mr. Rush and Mr. Bagot. Ten days later the Senate, by the unanimous vote of thirty Senators, approved the agreement, and, on April 28th, the President published it in a proclamation.

It does not appear that the action of Mr. Bagot was ever formally confirmed by his government, and no exchange of ratifications took place. But we assumed that Mr. Bagot had full power and authority to bind his government, and Great Britain has acted on the assumption that Mr. Rush was duly authorized and empowered to contract on behalf of the United States. The agreement, therefore, although concluded in an unconventional manner, and partaking of none of the ordinary characteristics of a formal treaty, must be considered as possessing all the binding force and effect of a treaty. As such it has been, since April 29, 1817, a part of the supreme law of the land.

The agreement became immediately operative upon the interchange of notes, and the work of dismantling the fleets was promptly begun. In a short time the victorious ships of Perry and McDonough were rotting on the sands, or had been converted into peaceful merchantmen.

It may perhaps aid us in arriving at a just conclusion respecting the questions which arise in connection with this Convention, and the proper attitude of the United States toward them, to consider (I.) the circumstances under which the agreement was made, and the objects which were sought to be accomplished by it; (II.) the manner in which the parties have observed the Convention, and the interpretations which they have placed upon it; (III.) the reasons which have been given for its abrogation or modification.

## I.

A knowledge of the environment of the contracting parties is essential to an intelligent interpretation of every contract. The conditions which surrounded the framers of this Convention differed so radically from the conditions which exist to-day, that a literal compliance with the terms of the agreement is little less than absurd, inasmuch as it often produces results which were not intended, or even contemplated, by the parties.

In 1817 the navies of the United States and Great Britain on the lakes were about evenly matched, and numbered some twenty-five wooden vessels each. No iron or steel vessels then existed, and steam had not yet been used in ships of war. There was no communication for vessels from one lake to another, except from Lake Erie to Lake Huron and from Lake Huron to Lake Michigan, and there was no passage from the lakes to the ocean. The Welland Canal was not opened for small vessels until 1833, and the chain of St. Lawrence canals was not completed until 1848. The shores of the lower lakes were sparsely settled, and the region of the upper lakes was an unexplored wilderness inhabited by savages. The chain of lakes was the only pathway of commerce to the West and Northwest. The war had left the Americans and Canadians along the border in bad humor and not at all disposed to treat one another in a neighborly manner. The presence on the lakes of large fleets of armed vessels, recently opposed to each other, hindered a recon-

ciliation and the establishment of friendly commercial intercourse.

These were the conditions which existed when Secretary Monroe wrote to Mr. Adams, in November, 1815. The thought that was uppermost in the minds of the framers of the Convention was the necessity for the immediate removal of the greatest obstacle to a good understanding between the two countries by the disarmament of the naval force on the lakes. Their main object was to secure a present reduction of the existing force. They were less concerned about the more remote future. This is apparent from the correspondence which preceded and constituted the agreement. The subject under consideration was the "Proposal to reduce the naval force of the respective countries on the American lakes." Of this force four vessels were to be "maintained," or "retained," by each party, and all other armed vessels were forthwith to be dismantled.

Three facts are especially to be noted in connection with the terms of the agreement.

First. Except for the four vessels agreed upon, no other vessels of war were to be "maintained," "built" or "armed" on the lakes. As there was no navigable connection between the lakes, or between Lake Ontario and the ocean, when Mr. Bagot and Mr. Rush used these terms, they understood that a vessel could not be maintained upon the lakes unless it had been built there, and that a vessel could not be armed or built on the lakes and maintained elsewhere. They did not contemplate a time when vessels larger than the largest warships with which they were then familiar could pass to and fro between the ocean and the headwaters of Michigan and Superior. From their point of view, to build on the lakes was to maintain on the lakes.

Second. The only restriction that Mr. Bagot in his note specifically places upon the vessels to be maintained by each power is that they shall "in no respect interfere with the proper duties of the armed vessels of the other party." He does, however, state in the first paragraph of his note that "His Royal Highness is willing to accede to the proposition made to the undersigned by the Secretary of the Department of State in his note of the 2d of August last." Now, a part of Secretary Monroe's proposition was that the naval force to be retained by each party should be restricted in its duty "to the protection of its revenue laws, the

transportation of troops and goods, and to such other services as will in no respect interfere with the armed vessels of the other party." It was clearly the intention that the four vessels agreed upon should be the only armed ships maintained by either government on the lakes for any purpose.

Third. The agreement makes no provision for any temporary deviations from the strict letter of the contract. It takes no account of the necessities of civil war, or of the duty of each party to maintain the neutrality of its own citizens.

As an arrangement for immediate mutual disarmament, the Convention was effective and beneficial to both parties. It was a distinct aid in bringing about a better feeling between the people along the border. It stimulated commerce on the lakes and encouraged settlement along their shores. The agreement worked smoothly during the first twenty years of its life. It injured no one and was of undeniable advantage to both parties. By the end of twenty years it probably had done all that its framers expected of it, and, in the opinion of many, it had accomplished all the good of which it was capable.

## II.

Changed conditions and unforeseen events speedily demonstrated that a literal compliance with the agreement was impracticable, and might be suicidal. Great Britain first felt the necessity of transgressing the letter of the contract. During the revolution in Canada of 1838 the British authorities increased their naval armament on the lakes beyond the limits fixed in the agreement, for the purpose of defending their shores from the incursions of small bands of so-called "Canadian Patriots."

This increase of the naval force led our Secretary of State, Mr. Forsyth, to remonstrate to Mr. Fox, the British Minister. Mr. Fox replied that the increase was made necessary in consequence of unlawful and piratical acts of hostility; that the armament was equipped for the sole purpose of guarding Her Majesty's Province against a manifest and acknowledged danger, and that it would be discontinued at the earliest possible period after the causes which created the danger had ceased to exist. This reply satisfied Mr. Forsyth for a year, when he again called the attention of Mr. Fox to the matter and suggested that, the causes for the increase in the armament having ceased to exist,



the President expected that the British force would be reduced to the limits fixed by the Convention.

This reminder of her treaty obligations did not deter Great Britain from laying plans for a still further increase in her naval force on the lakes. This action brought forth a protest from Mr. Webster, who had become Secretary of State. In replying to Mr. Webster's notes, Mr. Fox stated that the vessels of war serving on the Canadian lakes were equipped for the sole purpose of guarding Her Majesty's Province against hostile attack. With a touch of sarcasm he added that the hostile incursions with which Canada was threatened were from combinations of armed men unlawfully organized and prepared for war in the United States, in defiance of the efforts of the government to prevent them. The explanation made by Mr. Fox apparently satisfied Mr. Webster, although he had originally insisted upon a rigid compliance with the terms of the Convention.

In the meantime Congress had done something besides protest. The Fortification Act of September 9, 1841, contained a clause authorizing the construction and armament of such vessels on the lakes as the President might think proper, and such as should "be authorized by the existing stipulations between this and the British Government." Under this authority the iron, side-wheel bark *Michigan* was built at Pittsburg and taken in sections to Erie, where she was completed and launched in the summer of 1844. She registered 498 tons and carried two 8-inch guns and four 32-pound carronades.

It was now Great Britain's turn to remonstrate. All immediate necessity for increasing her navy had disappeared, and so her Minister, Mr. Packenham, conveyed to Secretary Calhoun his conviction that it was by all means desirable that the Convention of 1817 should be fulfilled to the letter by both contracting parties. Mr. Calhoun's reply merely refers to an enclosed note of the Secretary of the Navy, to whom he had referred Mr. Packenham's communication. The reasons given by Mr. Mason, Secretary of the Navy, for our violation of the agreement were that Great Britain was violating the agreement, and that the methods of naval construction had greatly changed since 1817. On the latter point he wisely said: "It is worthy of remark that at the date of the agreement between the two Governments steamers were in use to a very limited extent as passenger ves-

sels, and perhaps not at all as ships of war. The restriction as to tonnage would probably not have been adopted if their use had been anticipated. No effective steamer for any purpose, it is believed, would be built of a tonnage of 100 tons."

Either the British Ministry took thirteen years to consider and digest this suggestion, or the *Michigan* kept out of sight of British officers during that time, for it was not until 1857 that she attracted the attention of Lord Napier. He describes her as a revenue cruiser of the burden of 800 tons, and ventures to suggest to Mr. Cass that it would be expedient for him to inquire whether his government is complying with the treaty of 1817. There is no record of any written reply to Lord Napier's note.

For the next four years the *Michigan* again seems to have escaped attention. In August, 1861, Lord Lyons wrote to Secretary Seward that he had been instructed to represent to the United States Government that the armament of the *Michigan* would seem to be in excess of the limit stipulated in the agreement of 1817. Mr. Seward replied, giving the exact tonnage and armament of the *Michigan*, and stating that she was then, as theretofore, used exclusively for the purpose of recruiting the Navy, with artillery practice for the newly recruited men. He said: "It is not supposed by this Government that their retaining of the steamer in question upon the lakes is a violation of their arrangement of 1817. But if the British Government thinks otherwise, we shall be happy to consider its views in that respect."

Up to the present time the British Government has not accepted this invitation or presented its views. The subject of the armament and tonnage of the *Michigan* has not occupied the British Ministry for forty years. During that time this vessel has been prudently repaired and has survived in good condition the shot and shell of sixty years of diplomatic correspondence. Even now, in quiet weather, this venerable craft may still be seen proudly but slowly bearing the American flag over the calm waters of the Great Lakes as she goes about her hydrographic task of surveying the scenes of her former triumphs.

We come now to the most interesting and critical period in the life of the Rush-Bagot Convention. During the Civil War the United States found herself involved in a difficulty similar to that which embarrassed Great Britain during the Canadian Revolution of 1838. In 1864, Confederate sympathizers organized on

Canadian soil for the purpose of making depredations on the commerce of the lakes and hostile incursions into the Northern States. To suppress these demonstrations it became necessary to increase our naval force on the lakes. June 18, 1864, the House of Representatives passed a resolution directing that notice should be given to abrogate the Convention of 1817. The Senate did not consider the resolution at that session. In commenting upon the action of the House of Representatives, Lord Lyons wrote to Secretary Seward that Great Britain would view the abrogation of the agreement "with great regret and no little alarm." The United States, however, was not so much concerned about the alarms and regrets of Great Britain as she was about her own self-preservation.

On October 24, 1864, Secretary Seward, acting under instructions from the President, wrote to Charles Francis Adams, our Minister to England, instructing him to give to Earl Russell the six months' notice necessary to terminate the Convention. Mr. Adams gave this notice November 23, 1864.

It will be noted that the Executive Department acted in this matter, without any authority from Congress. It assumed the right to annul the Convention without legislative action. January 17, 1865, Senator Sumner, Chairman of the Committee on Foreign Relations, reported to the Senate, with an amendment, the resolution which had passed the House at its last session. On the next day the resolution passed the Senate. On February 4th the amendment was agreed to by the House, and, on February 9th, the resolution was approved and signed by the President in the following form:

**JOINT RESOLUTION to terminate the treaty of eighteen hundred and seventeen, regulating the naval force on the lakes.**

Whereas the United States, of the one part, and the United Kingdom of Great Britain and Ireland, of the other part, by a treaty bearing date April, eighteen hundred and seventeen, have regulated the naval force upon the lakes, and it was further provided that "if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice;" and whereas the peace of our frontier is now endangered by hostile expeditions against the commerce of the lakes and by other acts of lawless persons, which the naval force of the two countries, allowed by the existing treaty, may be insufficient to prevent; and whereas, further, the President of the United States has proceeded to give the notice required for the termination of the treaty by a com-

munication which took effect on the twenty-third of November, eighteen hundred and sixty-four: Therefore,

*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the notice given by the President of the United States to the Government of Great Britain and Ireland to terminate the treaty of eighteen hundred and seventeen, regulating the naval force upon the lake, is hereby adopted and ratified as if the same had been authorized by Congress.*

Approved, February 9, 1865.

Secretary Seward, Senator Sumner, both Houses of Congress and President Lincoln called this Convention a treaty, so that there is ample justification for giving it that title. As a treaty it was a part of the supreme law of the land. As a law of the land it was repealed by this joint resolution of Congress. Such action certainly would have been a death blow to any other treaty, but the Rush-Bagot Convention still survives. It was resuscitated in this remarkable manner.

As the final triumph of the Federal arms became certain, the attitude of Great Britain towards the United States changed, and the unfriendly manifestations along our northern border ceased. On March 8, 1865, Secretary Seward wrote to Mr. Adams: "You may say to Lord Russell that we are quite willing that the convention should remain practically in force."

No record has been found of any communication to the British authorities by Mr. Adams of his instructions. He may have conveyed them orally at an informal interview, but it is strange that he made no report of his action to his government. The notice given by Mr. Adams, November 23, 1864, would have terminated the agreement May 23, 1865.

June 15, 1865, Sir Frederick Bruce, who had succeeded Lord Lyons as British Minister, wrote to Mr. Hunter, Acting Secretary of State, enquiring whether the agreement of 1817 was virtually at an end, or whether the despatch to Mr. Adams of the 8th of March was intended as a formal withdrawal of the notice of November 23, 1864. Secretary Seward replied in writing to these enquiries the next day that the instruction to the United States Minister at London of March 8, 1865, "was intended as a withdrawal of the previous notice within the time allowed, and that it is so held by this Government." This is probably the only instance where an Act of Congress has been set aside through instructions issued by our Secretary of State to one of our foreign ministers. It is not a legislative precedent that is

likely to meet with the approval of modern Congresses, although it has been considered effective by the Governments of the United States and Great Britain.

Notwithstanding the passage by Congress of the Joint Resolution of 1865, the Rush-Bagot Convention still exerts its neutralizing influence upon the waters of the Great Lakes, to the manifest satisfaction of the diplomatists of both countries, and with equally manifest injustice to the shipbuilders and naval militia of the lake States. In April, 1890, F. W. Wheeler & Co., shipbuilders of West Bay City, Michigan, were the lowest bidders for the construction of a steel practice vessel for the Naval Academy, of about 800 tons displacement. Their bid was rejected on account of the agreement of 1817, and the contract was awarded to another firm, whose bid was five thousand dollars in excess of that of the Michigan firm. Other similar bids of lake shipbuilders have been rejected by the Navy Department on the same ground. The Department now rejects all bids for the construction of naval vessels on the lakes, even when they are to be taken unarmed to the ocean, or in sections to Atlantic shipyards for completion.

This action on the part of the Government led to the presentation in Congress of numerous petitions for the abrogation or modification of the agreement. On April 11, 1892, the Senate passed a resolution directing the Secretary of State to inform the Senate whether the State Department considered the agreement of 1817 in force, and, if so, what action had been taken to revive it after the passage of the Joint Resolution of 1865. In response to this resolution, President Harrison sent to the Senate, December 7, 1892, a message containing a most interesting and exhaustive account by Mr. John W. Foster, Secretary of State, of the birth, life, death, resuscitation and accomplishments of the Rush-Bagot Convention. In reply to the inquiry whether the Department considered the agreement still in force, he said: "The correspondence exchanged in 1864 shows that it is so regarded." He assumes that Mr. Adams communicated to the British Ministry the instruction of our Secretary of State to withdraw the notice terminating the agreement, and explains that Great Britain could not question Secretary Seward's power to make such a withdrawal. To sustain the Secretary's action was commendable international courtesy, good statesmanship and

sound policy. Whether Secretary Seward's action in committing his Government to the revival of a treaty, the abrogation of which Congress had ratified and approved, was good statesmanship and sound policy may well be questioned.

At the second session of the Fifty-sixth Congress the writer introduced in the House of Representatives a bill authorizing the construction and maintenance of a gunboat on the upper lakes. The object of the bill was to secure a modern vessel for the training of the Naval Militia. Three of the lake States had thoroughly organized companies of Naval Reserves, but most of the members of this force had never seen a modern warship. This bill was referred to the Committee on Naval Affairs and included as an item in the Naval Appropriation Bill of 1898, with the proviso "that said construction of said gunboat shall conform to all existing treaties and conventions."

On April 16, 1898, immediately upon the passage of this Act, the Secretary of the Navy addressed to the Secretary of State an enquiry whether he would be limited by any restrictions as to armament and tonnage in the construction of a gunboat for the lakes. To this Secretary Day replied, July 1, 1898, that the subject was one of the matters to come before the Joint High Commission on questions affecting the relations between the United States and Canada.

January 15, 1900, the House of Representatives passed a resolution requesting the Secretary of State to communicate to the House the status of this agreement between the United States and Great Britain. February 27, 1900, President McKinley transmitted to the House a message containing a report of Secretary Hay in response to this resolution. Mr. Hay includes in his report the message of President Harrison of December 7, 1892.

From Mr. Hay's report it appears that, on May 30, 1898, the United States and Great Britain agreed upon the creation of a Joint High Commission, to which should be referred for settlement various pending questions between the United States and Canada, among which was "a revision of the agreement of 1817 respecting naval vessels on the lakes." The American Commissioners were instructed to secure a declaration that it was not contrary to the true spirit of the arrangement of 1817 to build war vessels on the lakes to be taken to the ocean, or to maintain gunboats on the lakes for the training of the Naval Reserves.

They were also instructed to arrange with Great Britain for the passage of such vessels through the Canadian canals.

The Secretary's report concludes with these words: "It is understood that some satisfactory progress was made in the Joint High Commission toward the attainment of these ends, but the labors of the Commission have been suspended without reaching a definite result." And so, with the suspension of the labors of the Commission, the construction of the gunboat authorized by Congress three years ago is also suspended, and the Rush-Bagot Convention still survives.

Before passing from this phase of the subject it should be noted that we have for many years maintained on the lakes armed revenue cutters exceeding the tonnage and armament prescribed in the agreement of 1817. In 1857, and again in 1865, Great Britain raised the point that our action in this respect was in violation of the agreement. It certainly is a departure from the views entertained by the framers of the Convention. Our Revenue Cutter Service is under the Treasury Department, and we have replied to the several remonstrances of Great Britain that the revenue cutters were not naval vessels and were used exclusively for enforcing the revenue laws. This explanation has so far sufficed, although our revenue cutters are always available for use by the Navy in time of war. Many of them rendered conspicuous service in the recent conflict with Spain.

### III.

It only remains to consider what attitude the United States should assume towards this Convention in the future. The Convention reserves to both parties the right to abrogate the agreement upon giving six months' notice, and, therefore, may be honorably terminated at any time by either of the parties. What is the wisest course for us to pursue? What will be for the best interests of this country? Shall we continue in force the present arrangement and keep up the pretense of complying with the true spirit while persistently violating the plain letter of the agreement? Or shall we seek to secure such modifications of the contract as will make it conform to present conditions and meet the probable requirements of the future? Or shall we abrogate the agreement altogether?

As we have seen, the prime object of the Convention was immediate disarmament. In securing this object it was, and has

since been, an encouragement to peace and good will. It conferred no power on either party, and it imposed equal restraints on them both. At that time neither party could put gunboats upon the lakes without building them there. This is still true of the United States, unless she obtains the consent of Great Britain to use her canals. Great Britain, on the other hand, can put upon the lakes all of her war vessels that can pass the Canadian locks. In time of peace, therefore, the Convention places a restraint upon the action of Great Britain. This restraint would continue until the commencement of hostilities, or a declaration of war, so that, even if the relations between the two countries should become strained and war should seem imminent, Great Britain could not put a hostile fleet on the lakes until some act of belligerency had taken place.

If, however, this restriction on the power of Great Britain should be removed by the abrogation of the Convention, Great Britain could, at any time, in anticipation of trouble with the United States, place on the lakes a formidable naval force. We could only be prepared for such an emergency by maintaining on the lakes a force sufficient to cope with the fleet which Great Britain could send through the canals.

The locks of the Welland and St. Lawrence canals are 270 feet long, 45 feet wide, and 14 feet deep. Great Britain now has afloat 130 gunboats, 169 torpedo boats, and 108 destroyers, which could pass from the ocean to the lakes. In case of war, therefore, the Convention would seem to be an advantage to the United States. It is devoutly to be hoped that there will never be another war between the United States and Great Britain, either with or without the Rush-Bagot Convention; but it seems unreasonable to suppose that the abrogation of the agreement would make any perceptible difference in the present cordial relations between the two countries. The ties of friendship and commerce are now too strong to be lightly severed, or even strained, without just cause.

What are the disadvantages to the United States of the present arrangement? It should be noted at the outset that they all arise from conditions which did not exist when the Convention was agreed to, and could hardly have been anticipated by its framers.

In the first place, it debars the shipbuilders on the lakes from



competing for the construction of such government war vessels as can pass the Canadian canals. This is a discrimination against a large and important industry which should not be tolerated except for the most urgent reasons. The American Ship Building Company now has nine plants on the lakes, located at West Superior, Milwaukee, Chicago, Bay City, Detroit, Wyandotte, Buffalo, Cleveland, and Lorraine. There are three other yards on the lakes, at Bay City, Port Huron and Toledo. Owing to their proximity to the coal and iron deposits, all these lake shipyards can compete successfully with any of the yards in this country or elsewhere. They have built several lightships and other vessels for the Treasury Department, and have been, as we have seen, the lowest bidders for some of the naval vessels. The Government is thus a loser as well by being deprived of the competition of these lake yards.

The United States suffers a still more serious loss, which is forcibly alluded to by the Secretary of the Navy in his letter of April 16, 1898:

"This enquiry is prompted by the further consideration that it was doubtless not at all within the contemplation of the understanding of 1817 that the national resources in naval construction should be materially diminished thereby, as they are at present through the exclusion of the facilities afforded by establishments in the lake cities. These establishments might in emergency render important service in the construction of torpedo boats and other small vessels, which, with the concurrence of the British authorities, could be taken through the Welland Canal and placed in commission for sea service as promptly as would be possible if they were built on the Atlantic seaboard."

A strict adherence to the letter of the Convention also excludes the lake yards from the construction of naval vessels for other countries at peace with the United States and Great Britain. It will be seen, therefore, that the United States, by continuing in force this international agreement, deprives twelve private American shipyards of great advantages which are enjoyed by all other yards in the country. What prospect of national gain would now induce the President to make, or the Senate to ratify, a treaty which would shut out from the construction of all naval vessels twelve other private American shipyards on the Atlantic or Pacific coasts?

The Convention of 1817 prevents the efficient training of a large part of our Naval Militia. We now have over five thousand officers and men organized in eighteen States and the Dis-

trict of Columbia. Of this number eleven hundred are in Illinois, Michigan and Ohio. It is a disadvantage to the Government and an injustice and discouragement to these Naval Reserves to be deprived of the same practice on a modern gunboat that is enjoyed by the reserves in the seaboard States. There is a delicious humor, bordering on comic opera, in the position of our Government that it is wholly in harmony with the spirit of the Convention to maintain the Michigan on the lakes, but that it would shock the spirit of the agreement to replace that naval antiquity with a modern boat of the same tonnage and armament. If Great Britain should now propose to place upon the lakes a rival to our marine curiosity, we certainly could not object. But should we then make the farce complete by suggesting to Great Britain that she might maintain a vessel of the same tonnage and armament as the Michigan, but that her vessel must also follow the design and construction of the Michigan, and be furnished with the same archaic appliances? We should either have to adopt this course, or else assume the scarcely less ludicrous position of permitting Great Britain to maintain a modern gunboat on the lakes, while confining ourselves to the model of 1841. It is difficult for the ordinary mind to understand why replacing the Michigan by a modern boat would give the spirit of the Rush-Bagot Convention a greater shock than it received when the Michigan succeeded the wooden sailing vessels of the early forties.

In concluding this enumeration of the disadvantages to the United States of adhering to the agreement of 1817, attention must be drawn to the position in which the United States would now be placed in case of a war with Great Britain, although I do not take much account of the possibilities of war between the two countries. War ends all treaties between the belligerents. In anticipation of hostilities, Great Britain could concentrate on the upper St. Lawrence a powerful naval force ready for operation on the lakes upon the declaration of war. Our most efficient method of opposing this force would be by land batteries commanding the upper St. Lawrence and the waters connecting the lakes. With or without this Convention we shall always be at a disadvantage in a conflict with Great Britain on the lakes until we have constructed a waterway through our own territory from the ocean to the lakes of sufficient size to admit the passage of vessels as large as those which can pass through the Canadian canals.

A careful study of the history of the Rush-Bagot Convention, and an impartial estimate of the advantages and disadvantages accruing to the United States from an adherence to its terms, as now interpreted, lead to the conclusion that the loss to the United States outweighs the gain; that it is to the interest of both parties to make a new arrangement respecting naval armaments on the lakes; that the agreement of 1817 is obsolete, and not fit for the foundation of an international understanding; that a treaty should be made between the United States and Great Britain which would expressly annul the Rush-Bagot Convention and settle the questions of armament and naval construction on the lakes in conformity with modern conditions.

As the Joint High Commission is in a state of suspended animation, with little prospect of recovery, may we not hope that our present Secretary of State and the present distinguished Ambassador from Great Britain will soon be able personally to adjust the differences between the two countries, and link their names to a treaty which, while impartially protecting the rights of both, will, as a pledge of permanent peace, rival the famous Rush-Bagot Convention.

HENRY SHERMAN BOUTELL.